FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 663/2006

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATED : April 5, 2007.

Heard Shri Parsodkar for the appellant, and Shri Saboo for the respondent.

The appellant is the original defendant. A suit filed by the plaintiff for grant of specific performance of contract is decreed by the trial Court by exercising its discretion. The judgment passed by the trial Court is upheld by the first appellate Court.

Shri Parsodkar, the learned counsel for the appellant, took this Court through both the judgments and especially the reasoning recorded by both trial and appellate Courts for decreeing the suit.

The submission made on behalf of the appellant that time was the essense of the contract and, therefore, the suit was liable to be dismissed, is ill-founded as the aforesaid plea was not raised by the defendant in its written statement. The decision

reported in **AIR 1993 SC page 1742** would also not come to the rescue of the appellant as it is categorically observed in para 5 of the aforesaid decision that a plea about the time being the essense of the contract was specifically raised in that case. Even if it is assumed that such a plea was raised by the appellant in this case, still the finding of fact recorded by both the Courts that the appellant had not made the necessary construction as per the stipulation in the agreement of sale, on or before 31/3/1999, would show that the defendant/ appellant had not performed its part of the contract.

I find no perversity whatsoever in the reasoning recorded by both the Courts. In fact, the view and the approach of both the Courts in granting the relief of specific performance of contract in favour of the plaintiff/respondent is extremely reasonable and correct. The finding recorded by both the Courts do not give rise to any substantial question of law.

Since no substantial question of law arises in this second appeal, same is dismissed with no order as to costs.

JUDGE

RMP